

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5876 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MODI LALITKUMAR DWARKADAS

Versus

STATE OF GUJARAT

Appearance:

MR BS PATEL for Petitioner

MR NIGAM SHUKLA, A.P.P. for Respondent No. 2, 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 16/10/96

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dated 16th April, 1996 passed by the District Magistrate, Mehsana, detaining the petitioner under the provisions of the Gujarat Prevention of Antisocial Activities Act, 1985 (" PASA Act" for short). The detention order was executed on the same day i.e. 16th April, 1996 and since then the petitioner is

under detention lodged at Jamnagar Central Prison, Jamnagar.

This Special Civil Application was filed in this Court on 7th August, 1996 and on 8th August, 1996 rule returnable by 6th September, 1996 was issued. So far neither any reply has been filed on behalf of the respondents nor any affidavit-in-reply has been filed by the detaining authority.

The grounds of detention enclosed with the detention order show that six criminal cases under Prohibition Act were registered against the petitioner and the same were pending before the Court. The detaining authority after noticing the allegations of these criminal cases has mentioned that the petitioner was carrying on antisocial activities and was engaged in the unlawful business of manufacturing and selling liquor; was doing Dadagiri and has become a problem for the public order and that his business of liquor was injurious to public health. The detaining authority has recorded that the petitioner was a known bootlegger. Reference has then been made to the statements made by six witnesses on 10th March, 1996 and 11th March, 1996. All these witnesses have stated that the petitioner has been using weapons against the witnesses in case they declined to cooperate with him in the business of unauthorized liquor and that the petitioner has been subjecting such witnesses, as also innocent people of the locality to public beating leading to disorder amongst the public. The detaining authority has mentioned that the petitioner was not only a bootlegger but a headstrong person and the witnesses being frightened and afraid of him had requested to keep their identity a secret. Accordingly, the provisions of Section 9(2) of the PASA Act have been invoked. The detaining authority has recorded that looking to the petitioner's antisocial activities, the proceedings of externment may not be expedient and it was necessary to detain the petitioner, and therefore, the detention order was passed.

Although the detention order has been challenged on more than one grounds, the learned Counsel for the petitioner has laid stress on the ground that the allegations as has been levelled against the petitioner even if taken to be true on its face value do not constitute a case of breach of public order. The learned Counsel has contended that at the most it can be said to be a breach of law and order and the detention order therefore deserves to be quashed and set aside on this ground alone.

I have considered the allegations and materials relied upon against the petitioner by the detaining authority while passing the impugned detention order. On 4th October, 1996 itself a detailed order has been passed in Spl.Civil Application no.3879/1996 in which a considered view has been taken on the basis of the ratio decidendi of several Supreme Court decisions and the decision of this Court that the allegations and materials such as has been relied upon in the present case do not constitute a case of breach of public order and at the most it can be said to be a breach of law and order. The aforesaid decision applies on the facts of this case with full force and I find that the impugned order of detention has been passed on the collateral ground of law and order. In absence of any ingredients of the breach of public order, the impugned detention order deserves to be set aside on this ground alone.

Accordingly this Special Civil Application is allowed. The impugned detention order dated 16 April, 1996 passed by the District Magistrate, Mehsana, is hereby quashed and set aside. The detention of the petitioner is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.

sf-mrc